

Surface Waters & Designated Uses (Appendix B) WorkGroup Meeting Minutes December 6, 2017

ATTENDEES:

By phone: Dave Weedman, Lauren Whittaker

In Person: Lee Decker, Justin Bern, Hilary Hartline, Ed DePinto, Jim DuBois, Sandy Bahr, Scott Thomas, Jim Kudlinski

ADEQ: Jason Sutter, Patti Spindler, Heidi Haggerty

Notes:

- 1) Reviewed Nov.17th meeting notes
- 2) Jim D. question about issues being submitted prior to meeting; Patti replied that comments on upcoming topics are requested in advance (2days prior) of the next meeting
- 3) Patti reviewed the ppt: Purpose of this charter, Problem statement: update the App B waters and designated uses, ADEQ has finalized membership, schedule & deliverable deadline
- 4) Topic 1- How can ADEQ improve stream reach descriptions, ect.
 - a) Reviewed topics #1,2 sent prior to meeting- see slides
 - b) All A&Ww waters are considered either perennial or intermittent. Definitions are in section 101 of the SWS
 - c) Are Appendix B listings tied to ADWR listings? Is there deliberate coordination between ADEQ and ADWR (Scott); no there is not (Patti). Do they have the same definitions of perennial, intermittent & ephemeral waters (Lee)? Patti will look into ADWR definitions and report back [ADEQ is investigating this]
 - d) Ed asked about how we define ephemeral & where are they? How do we decide the length of flow regime reaches? [Response: Ephemeral definition is in section 101, definitions of SW Standards and lengths are recorded on WBID map.]
 - e) Map
 - i) Workgroup members would like a user friendly map that identifies Appendix B waters (Scott, Hilary, Ed) What maps are available? Is there a better descriptor to cross-reference waterbody listings? Can we call out ephemeral and intermittent separately?
 - ii) ADEQ has eMaps available on our website. [The "Watersheds" map has a "Streams - designated use" layer that has WBID, designated uses and designatedUseFlowRegime fields for waters. We are requesting to add additional layers to eMaps]
 - iii) In 2016 TR we updated reach descriptions for Appendix B waters.
 - iv) How do descriptions match with WBIDs (Jim)?
 - v) Patti suggested we could list WBID in Appendix B list, so members can reference WBID# when viewing EMaps to locate a waterbody; Jason countered that this is not a good idea since there are sometimes many WBIDs per waterbody making the AppB list long & these WBIDs would then be in rule & would take rulemaking to change.

- vi) Is there a way to list all waters of the state in AppB? No, there are hundreds of waterbodies, most covered by Trib rule.
 - vii) Can we add flow regime map & is it accurate enough to share? [ADEQ is investigating this]
 - viii) Explore possibility of linking App B waters to GIS map in Emaps [this already exists in the "Watersheds" eMap in the "Streams-designated use" layer]
 - ix) Jason suggested Emaps already does and My Community pages will provide links to Impaired waters as well as Appendix B waters
- 5) WOTUS- comment "any lake/stream that is considered WOTUS by ADEQ should be in Appendix B"; request more clarity on what is listed
- a) What triggers ADEQ to list a water in App B (Jim)? A JD, permit, discharge, WWTP?
 - b) Is there a formal process at this point for listing a water in AppB (Jim)- do we need one? [ADEQ is investigating this]
 - c) If ADEQ wants to add a designated use, this would be done through TR rulemaking, correct (Scott)? Yes, especially for DWS or AgI, AgL uses.
 - d) Hilary –would canals have to have designated uses to be listed in AppB? No, Phoenix area canals were listed to protect Drinking water plants from discharges. East Mesa Floodway was listed because the COE JD indicated it is a WOTUS.
- 6) Urban Lakes- not WOTUS
- a) ADEQ agrees that non-WOTUS waters should not be in App B
 - b) Any new lakes would need to be identified as WOTUS before listing
 - c) Jim D- add to other comment that reclaimed water should also be excluded
 - d) Mesa request that Riverview and Dobson Lake be removed from AppB
 - e) AGFD concerned if Riverview Lake were removed, there would be a gap in protection for human health. AGFD stocks fish in this lake and its heavily used recreation area. Same concern for other waterbodies with special species in them.
 - f) EPA disapproval letter in 2016 – EPA- WQS not proper method for making WOTUS evaluations; discussion with EPA ongoing
 - g) JD from COE required? Yes for 404. ADEQ can make 402 AZPDES application decisions, based on whether a water is WOTUS. May have waters that are not WOTUS affecting WOTUS downstream.
 - h) Can we issue fish advisories for non-WOTUS lakes (Lee)? We have only done fish advisories for WOTUS waters so far. We adopted EPA Hg fish tissue criterion & developing implementation procedures document, but the advisory process is in conjunction with ADHS and AGFD, not part of CWA program. [Sam R.- we would not typically issue a fish advisory on a non-WOTUS lake, unless another agency requested it; AGFD or the Counties could request it under their health advisory program.]
- 7) Because the WOTUS definition is in flux, suggest Adopting language to say that if a water is not a WOTUS designated uses are not applied (Lee).
- a) Look at the definition of surface water, our definition includes intermittent & ephemeral waters; see 2001 Preamble for history and ADEQ definition (Jim K)
 - b) States adopt WQS for WOTUS – this is the scope of waters. Confusing that our definition of surface waters doesn't match federal statute (Scott). Suggest using same definition as in CWA. Define by reference? [ADEQ is investigating]

- 8) Topic #2: Should ADEQ add impaired or AZPDES permitted waters to Appendix B
- i) Why would you not add these waters to provide clarity (Sandy)
 - ii) For ADEQ, listing provides a record of decision making for impaired waters (Patti)
 - iii) If we add an AZPDES water to App B are we duplicating efforts with permitting program because the Permittee is already monitoring (Ed); is there any benefit to listing the receiving water if there are no impacts to aquatic life? ADEQ adds waters to AppB because EDW is a special use; do we want to capture this in AppB? If covered by the trib rule, maybe doesn't need to be listed (Jason). The EDW can change the A&W use in the receiving water, which may affect other downstream users (Patti).
 - iv) Impaired waters- Small tribs in the Impaired waters list; if no other uses apply than those identified per Trib Rule, then do we need to add? (Lee)
 - v) If impaired waters not added to App B, How to let the regulated community (eg. Construction site developers) know that the water impaired? (Ed) MyDEQ will provide this info later; in the process of development (Jason). [ADEQ eMaps provides current map of impaired waters]
 - vi) A lot of WWTP will hold an AZPDES permit but not have a discharge. Do they have sustained flow to stream reaches? This issue should be discussed in the EDW workgroup & the definition. Does EDW apply in places where no/low discharges occur (Jim)? ADEQ has done some work on identifying flow condition for AZPDES permittees and indicated that in the spreadsheet handout (Patti). Jason-a reason to keep AZPDES receiving waters in Appendix B is to record the decision making for those waters. Maybe not the same argument for impaired waters.
 - vii) Need to look at the EDW definition; ADEQ needs to develop and send out rationale as to why we would add waters to App B. Rationale for three different cases. Give protocol for how to list in these different cases and send back out to the group. Patti will draft these scenarios and send out to the group to determine if we have consensus at the next meeting.
 - viii) Ed suggested we have a longer time period at the next meeting; expand the amount of time for each next meeting.
 - ix) ADEQ will send out the rationale for the three cases. Sandy may not be prepared to vote. Don't schedule so late in the day, traffic concerns. Add a half hour prior.
 - x) Comments will be requested two days in advance. Members would like minutes well in advance to share comments with their people. Compile members' additional comments if possible.

Closed meeting at 4:10